

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA

WRIT PETITION No.8369 of 1999

G.S.Mani .. Petitioner

-Vs-

1.Health Officer,
Corporation of Chennai,
Ripon Buildings, Chennai-3.

2.Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai-3.

3.Government of Tamilnadu, rep.,
by Secretary, Municipal
Administration Department,
Fort St. George,
Chennai-600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records in impugned proceedings H.D.C.No.11/3843/98 dated 4.9.1998 on the file of the respondents 1 and 2 herein and quash the same and direct the respondents 1 and 2 herein to alter the date of birth entry in the service register of the petitioner as 3.5.1943 instead of 1.7 .1941 and retire him from service on superannuation with reference to the altered date of birth namely 3.5.1943.

For Petitioner : Mr.K.G.Krishnaraj
for Mr.S.Sadasharam

For respondents 1&2: Ms.P.Baghyalakshmi
for Corporation.

For respondent-3 : Ms.Thenmozhi Shivaperumal
Additional Govt. Pleader.

:O R D E R

Heard the learned counsel appearing for the parties.

2. The petitioner was working as a driver under the Corporation of Chennai/second respondent. It seems that at the time of his joining service no document had been produced by the petitioner himself regarding his date of birth but on the basis of assessment made by the Health Officer, the date of birth was initially indicated to be 1.7.1942 . Subsequently, at some point of time such date of birth was corrected by the Corporation to 1.7.1941 and an endorsement of the Health Officer was obtained. Petitioner in the writ petition has submitted that the erroneous entry in the service register regarding date of birth came to his notice in February 1998 and soon thereafter he filed application on 2.3.1998 contending that his correct date of birth is 3.5.1943. In support of such application, the petitioner filed the certificate from the School as well as the birth certificate issued by the second respondent itself. However, such application was rejected solely on the ground that application for correction of date of

birth should be made within a period of five years from the date of entry into service and such application was barred by time. The memo dated 4.9.1998 is to the following effect:-

"It is informed that as per the Rule 49 of the State and Subordinate Service any request for alteration of date of birth is made after expiry of five years service cannot be entertained. Hence, the request of Thiru G.S.Mani is rejected"

3. The learned counsel appearing for the petitioner has submitted that Rule-49 upon which reliance has been placed by the respondents, has been amended in the year 1992 and 1996 and without considering the effect of such amendment, the application had been mechanically rejected on the ground of limitation. The first amendment is dated 15.12 .1992 as per G.O.Ms.No.395 Personal and Administrative Reforms (Personnel.S) Department. The amendment was to the following effect:-

"In the said rules in Rule 49 in Sub Rule (c) the following proviso shall be Added namely:-

Provided that the application for alteration of date of birth of a person who entered into service prior to the 24th January 1961 shall be submitted atleast one year before the date of his retirement reckoned with reference to the official records"

Subsequently on noticing certain discrepancy a further amendment was made by G.O.Ms.No.66 dated 2.2.1996 to the following effect:-

"In the said Government Order in the first paragraph in the last line for the expression 24.1.1961 the expression 19.8.1970 shall be substituted."

4. There is no dispute that the petitioner had entered into service before 1970 as he was appointed as a driver and entered into service on 7.10.1968. The amendment was therefore squarely applicable to this case and the rejection of the application on the ground that such petition for

correction should have been made within five years of entry into service appears to be illegal.

5. The effect of such amendment has been considered by the Division Bench decision of this Court in *Government of Tamil Nadu vs. S. Marimuthu* (2003 (2) CTC 103). In view of the aforesaid position and the Division Bench decision, there cannot be any doubt that the application filed by the petitioner has been erroneously rejected by the authorities without proper application of mind and without considering the relevant amendments.

6. Learned counsels appearing for the respondents 1 and 2 and learned counsel for respondent 3 have however placed reliance upon the decision of this Court in *The Government of Tamil Nadu vs. J. Ramasamy* (2002 (2) CTC 577) and the decision of the Supreme Court in *State of Tamil Nadu vs. T.V. Venugopalan* ((1994) 6 SCC 302). Interpreting Rule 49 before it was amended, the Supreme Court had observed that application for correction of date of birth has to be made within five years of entry into service and cannot be made thereafter. The decision of the Supreme Court is therefore not applicable to the facts of the present case. The aforesaid decision of the Supreme Court was followed in a subsequent Division Bench of this Court in the decision reported in 2002 (2) CTC 577. Unfortunately, however, the effect of amendment of the rule was not brought to the notice of this Court in the above case. The decision being per incuriam cannot be followed particularly in view of the subsequent Division Bench decision which has considered the effect of amendment in the year 1992 and 1996 and has come to a conclusion that an application for correction of date of birth given after five years would be maintainable in respect of persons who had entered into service prior to 19.8.1970.

7. The learned counsel for the State Government also further contended that the decision reported in 2003 (2) CTC 103 is now the subject matter of a Special Leave Petition before the Honourable Supreme Court. Merely because special leave application has been filed and is pending, the effect of the Division Bench decision is not taken away.

8. The next question is as to whether the question of correction of the date of birth should be directed to be reconsidered by the authority or should be finally decided in the present case. In normal course, such a matter should be left to be decided by the employer. However, in the present case, I find that the initial entry was made not on the basis of any representation made by the petitioner himself nor on the basis of any documents or declaration furnished by him, but on the basis of "assessment" made by the Health Officer. It is quite well known that such assessment is at best by an educated guess and it cannot be said that the correct date of birth had been entered. Moreover, even such date of birth which had been entered initially as 1.7.1942 was changed to 1.7.1941 subsequently and that too, unilaterally. There is nothing on record or even in the counter to indicate, nay, suggest that such correction in the service register was made after giving the petitioner any opportunity of hearing. It has to be remembered

that petitioner is almost semi-literate person, who was engaged as a driver. The contention to the effect that he must have known about his date of birth as indicated in the service register cannot be accepted. Moreover, nothing has been indicated in the counter regarding the certificate of date of birth issued by the corporation itself. The original document which was furnished to the Corporation indicates that the date of birth was 3.5.1943 and the date of registration was 7.5.1943. In other words, the relevant entries had been made very soon after the birth. Even though, the petitioner applied for obtaining a copy subsequently, it is not the case of the respondent that the relevant entries were made subsequently. The respondents 1 and 2 in their counter affidavit do not raise any doubt whatsoever regarding the genuineness of the birth certificate. As a matter of fact, when the matter was heard previously, the learned counsel for the Corporation was asked to obtain instruction on this aspect and she has submitted that the certified copy of the date of birth had been issued on the basis of the entries made in the birth register. Since the entries had been made in 1943 itself, when there was no occasion for any doubt, there is no reason to dispute the genuineness of such entry. At the cost of repetition, it may be reiterated that in fact, no doubt whatsoever was raised regarding the genuineness of such entry. Since the initial entry had been made on the basis of mere guess work by the Health Officer and the application for correction was rejected on an erroneous view regarding period of limitation, it is a fit case where the date of birth should be corrected without further undo and service benefits of the petitioner should be made available.

9. It has to be borne in mind that the petitioner had filed an application for correction long before his retirement and if a little effort would have been made by the respondents 1 and 2, the petitioner would have continued in service. As a matter of fact, even before actual retirement, the petitioner had approached this Court and filed an application for injunction, wherein, the High Court while rejecting injunction application after hearing counsels for both the parties, had observed that if the petitioner would succeed in the writ petition, all necessary benefits would be made available to him. Since such an observation had been made, it would be a travesty of justice to deny the petitioner the financial benefits, even though he had not worked during the period. The non engagement of the petitioner was not due on any mistake on the part of the petitioner but due to mistake on the part of the respondents, who had rejected the application without proper application of mind and even without bothering to verify their own records.

10. Therefore, in the aforesaid circumstances, the writ petition is allowed. It is directed that 3.5.1943 should be taken to be the actual date of birth of the petitioner and on that basis, the date of retirement would be calculated and all financial benefits should be made available to the petitioner. This should be done within a period of three months from the date of communication of this order. No costs.

Index : Yes.

Internet: Yes.

svn

To

1. Health Officer,
Corporation of Chennai,
Ripon Buildings, Chennai-3.

2. Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai-3.

3. The Secretary,
Government of Tamilnadu,
Municipal Administration Department,
Fort St. George,
Chennai-600 009.

□